

# TOWN CLERK'S REPORT – see also Attachment 1.

## The General Power of Competence (GPC)

### Introduction

The General Power of Competence was introduced by section 1(1) of the Localism Act 2011. It allows local authorities ('Local Authority' is defined in s.8 of the Localism Act 2011) to do anything an individual can do, unless prohibited by law. It is known as a power of first resort and replaced the wellbeing power in England (a power introduced by section 2(1) of the Local Government Act 2000).

It cannot be used to raise a precept, or override existing legislation in place before the Localism Act 2011, known as pre-commencement limitations, or, post-commencement limitations expressed to apply to the general power S.2 subsection (2).

There is no statutory maximum limit to expenditure that can be incurred by an eligible council using the power. However, it cannot incur expenditure under Section 137 of the Local Government Act 1972 (except under s.137 (3)).

### Use of the GPC

The General Power of Competence allows a council to:

- Spend money on an activity outside the parish.
- Spend on an individual (unlike Section 137), e.g. a grant to a young person doing voluntary service overseas.
- Trade – if it sets up a company or a co-operative society.
- Invest in the local economy.

It can also use the GPC even if there is another power to act.

### Risks and restrictions

A council must be aware of risks and restrictions when considering use of the GPC:

- Risks – financial, reputational, lack of community support.
- Restrictions – overlapping legislation, permissions required (e.g. planning or highways),

### Examples of activities a council might undertake using the GPC:

ACTIVITY	RISK	RESTRICTION
Plant bulbs in roadside verges	Impact on biodiversity Injury	Highways Authority Permission <sup>1</sup>
Hold a Guy Fawkes bonfire party	Injury Financial loss	Health & Safety Law
Run a community shop or post office	Lack of community support Fraud or theft Financial loss	Employment Law <sup>2</sup> Equality Legislation GDPR

<sup>1</sup> Highways Act 1980 s.96 - Powers of highway and local authorities to plant trees, lay out grass verges, etc.

<sup>2</sup> Employment Rights Act 1996, Pensions Act 2008, Health & Safety at Work Act 1974.

## Eligibility

The two prescribed criteria (Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012) by which a council can become eligible to use the General Power of Competence are that:

- It has a qualified clerk<sup>3</sup> and
- A minimum of two-thirds of councillors (out of the total number of seats) are elected members, either elected at the last election or a subsequent by-election, including an uncontested election.

## The process for confirming and reaffirming eligibility

A council must pass a resolution at a meeting of full council confirming its eligibility (at that specific time). This must be recorded in the minutes. At each subsequent Annual Meeting that takes place in a year of ordinary elections, the council must reaffirm that it meets these conditions.

At the Statutory Meeting of the town council held on 15 October 2019, it was **“RESOLVED: - that the Town Council confirms its eligibility to use the General Power of Competence”** (Minute 118 refers).

**Currently, a minimum of  $\frac{2}{3}$  of Burnham town councillors are not elected members.** Eligibility remains in place until the next 'relevant' Annual Meeting even if the conditions of the eligibility criteria have changed. A council may continue with projects *started* using the GPC, but must not undertake new ones.

Sarah Grimes PSLCC  
Town Clerk

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<sup>3</sup> Certificate in Local Council Administration (CiLCA) or, the Level 4 qualification in Community Governance, awarded by the University of Gloucestershire.